

APPENDIX B: ANALYSIS OF THE LEGISLATIVE DECLARATIONS RELATED TO CHARITABLE/NONPROFIT GAMBLING

BILLS TO AUTHORIZE GAMBLING, 1969-73, 1994

Abbreviations and terms used in this section:

C/NP = charitable and nonprofit
HB = House Bill
SHB = Substitute House Bill
EHB = Engrossed House Bill (passed)
ESHB = Engrossed Substitute House Bill (passed)
2SHB = Second Substitute House Bill
EHCR = Engrossed House Concurrent Resolution

Overview. The Commission asked that the legislative declaration regarding charitable and nonprofit (C/NP) gambling be researched as part of this project, including researching whether other drafts were considered, whether charitable and nonprofit organizations were discussed and whether any court cases provided additional interpretation.

Charitable and nonprofit organizations were always a part of the discussion of authorizing gambling in Washington State. Both the legislative history and declarations make this clear. For some advocates, C/NP gambling was the primary reason to authorize gambling. The types of C/NP gambling envisioned in the 1960s and 1970s were church and other social bingo and raffles.

However, the legislative history clearly indicates that the Legislature intended to authorize more than C/NP gambling. This is particularly clear in looking at the Senate's action on HB 711 in 1973. The Senate considered and defeated an amendment that would have limited authorized gambling only to C/NP gambling.

The 1973 (SHB 711) legislative declaration includes a reference to C/NP gambling but the reference is somewhat indirect and less clear than language in bills considered in previous years. The relationship between raising funds for C/NP organizations and the authorized gambling activities is not clearly stated in the 1973 legislative declaration.

Further, all of the early versions of the legislative declaration emphasize strict control, keeping the criminal element out of gambling, and prohibiting professional gambling. This emphasis is underscored by the 1994 addition to the legislative declaration, which reiterates the need for strict regulation and control and does not mention C/NP gambling.

Conclusions. From the analysis below, it appears that the Legislature consistently intended:

- to authorize charitable and nonprofit gambling, as part of a wider authorization of gambling;
- to support the concept of gambling as a social pastime and not restrict participation in social pastimes;

- to acknowledge (although not specifically in the legislative declaration) that some charitable and nonprofit organizations would utilize gambling to raise funds;
- to strictly limit and control gambling in general;
- to keep the criminal element out of gambling.

The most recent legislative declaration language focuses solely on strict limits and controls and keeping the criminal element out of gambling.

Thus it is not possible to conclude that the Legislature intended to favor or encourage charitable/nonprofit gambling over other forms of gambling, or that the Legislature intended to assure the success of charitable/nonprofit gambling.

Analysis. There were five pieces of legislation that contained legislative declarations related to the Gambling Act that passed in 1973 (see table comparing versions):

HB 453 (1969), which reflected Attorney General Gorton's beliefs about restricting and controlling gambling. Original House sponsors were Kopet, Bottiger, Chapin, Sprague, Murray, Pardini and Gladder. This bill failed.

HB 50 (1970), sponsored by Murray, Bottiger, Pardini, Adams, Gallagher, Bagnariol, Martinis and Merrill. Contained specific language differentiating between "professional gambling for profit and charitable fund-raising by bona fide charitable and nonprofit organizations." This bill failed.

EHB 291 (1971) passed in anticipation of SJR-5's passing in 1972. Sponsors not known. Bingo—and the risks of exploitation--were a significant focus; Passed.

ESHB 711 (1973), sponsored originally by Kuehnle, Bagnariol, Ceccerelli, Morrison and Gallagher. The declaration itself enumerated the gambling activities to be authorized. Passed.

2SHB 2228 (1994) sponsored originally by Reps. Heavey, Lisk, Springer, Schmidt, Van Luven and Roland. Passed.

Professional gambling and organized crime. All four early (1969-73) versions spoke specifically to the "close relationship" between professional gambling and organized crime, and made it clear that the Legislature intended to restrain people from making a profit from "gambling" (1969 and 1970) which then changed to "professional gambling" in 1971 and 1973.

The fifth version (1994) was very direct in stating that "the public policy of the State of Washington on gambling is to keep the criminal element out of gambling by limiting the nature and scope of gambling activities and by strict regulation and control."

Not restrict participation in social pastimes that are not for profit. The desire to avoid restricting participation in social pastimes was clear in all four early bills. A reference to "social pastimes that are more for amusement rather than for profit" showed up in 1971 and carried over to 1973. In 1973, reference to "activities" in addition to

social pastimes is inserted. The 1994 addition contained no reference to social pastimes.

Reference to “bona fide charitable and nonprofit organizations.” This reference first appeared in 1970, in the context of “differentiating clearly” between “professional gambling for profit and charitable fund-raising by bona fide charitable and nonprofit organizations.”

In 1971 the Legislature made it clear that the “raising of funds for the promotion of bona fide charitable, educational, scientific, health, religious, civic and patriotic causes” is “in the public interest.” This statement was then linked to the language about differentiating between gambling for profit and professional fund-raising by bona fide charitable and nonprofit organizations. Note, however, that the term “professional” was moved from describing gambling to describing fund-raising.

1973 showed a significant change, however. It continued the statement that, “raising funds for the promotion of bona fide charitable or nonprofit organizations is in the public interest, and added “as is participation in such activities and social pastimes as are authorized” in this chapter. This is equivalent to saying, “the sky is blue, as is this (blue) pencil.” Should the sky turn gray, the pencil would not also turn gray.

Note that the language differentiating between gambling for profit and fund-raising for charitable and nonprofit organizations was deleted in the 1973 Declaration.

The 1994 addition contained no reference to charitable and non-profit gambling.

Bingo singled out. Only in the 1971 legislation was bingo singled out as having been “the subject of exploitation by professional gamblers, promoters and commercial interests.” This may have referred to the corruption hearings that were occurring about this time in Seattle. This reference was not carried forward into the 1973 legislation. Bingo was not mentioned in the 1994 addition.

List of approved gambling activities. In both 1971 and 1973 the Legislature chose to list the gambling activities they intended to authorize. Here is the comparison:

1971	1973
Bingo	Bingo
Raffles	Raffles
Pinball machines	
Amusement games	Amusement games
Social card rooms	Social card rooms
Punch boards	Punch boards
Pull tabs	Pull tabs
	Mah Jongg
	Card rooms

In 1971 the Legislature said its policy was that “all phases of the supervision and regulation of...[these games] ...should be closely controlled.”

The 1973 legislation authorized these activities when they are conducted "...pursuant to the provisions of this chapter and any rules and regulations adopted pursuant thereto..."

The 1994 addition said that by "limiting the nature and scope of gambling activities" the State can keep the criminal element out of gambling.

Construal and enforcement. The 1969, 1970 and 1971 bills all called for the provisions of the act to be "liberally construed" and "enforced with a view to carrying out the above declaration of policy."

Interestingly the 1973 version of this clause was much different. It called for "All factors incident to the activities authorized in this chapter shall be closely controlled and the provisions of this chapter shall be liberally construed to achieve such end." In other words, the key focus should be "close control" and the law liberally construed to achieve close control.

In 1994, the language clearly focused on "strict regulation and control."

Commission philosophy. There was a period of time in the mid-1980s where the Commission envisioned itself both as a regulator and as a "facilitator or profitable operations" for C/NP organizations. In 1987 the Commission extended this concept by stating that its role was to assure that "charitable/nonprofit organizations are furnished a regulatory environment that will enable them the opportunity to raise the highest possible amount of funding for use to promote or further their purposes." (1987, Bingo in Washington State—1986—Past, Present and Future, page 14.). While these were noble sentiments, there is no basis for them in the legislative declarations.

Further information. Documents were not available to provide additional detail about the reasons for the legislative declaration language in 1969-73. However the 1994 language was the product of a Legislative Task Force on Gambling Policy and its report provides the following background:

In 1993, the Legislature passed EHCR 4403, in response to the expansion of gambling by Indian tribes, by neighboring states and by the federal government (cruise ships.). EHCR 4403 established a Legislative Task Force on Washington State Gambling Policy. The reasons for establishing the Task Force are stated as follows:

- Whereas, the State's public policy has been to prevent organized crime from infiltrating legalized gambling;
- Whereas, increased competition for the gambling dollar will result in pressure to legislate increases in the nature and scope of gambling currently authorized in the State; and
- Whereas, the State's public policy on gambling, in many respects, has not been clearly defined....

The assigned work of the Task Force included as item #3 the need for more clearly defining the State's public policy on gambling.

The Task Force consisted of legislators and representatives from the Governor's Office. The Gambling Commission, Horse Racing Commission and Lottery Commission all had liaison, non-voting members.

The Task Force Report included a wide-ranging summary of a number of key issues related to gambling in Washington State at that time. The report notes that incremental expansions of gambling “designed to level the playing field” could result in explosive growth in overall gambling. Based on their conclusion that “the pressure to expand gambling in Washington State will continue to mount,” the Task Force recommended adding language to RCW 9.46.010 clarifying the State’s overall policy. The recommended language came from Washington State’s IGRA (Indian Gaming Regulatory Act) Negotiating Team, assigned to negotiate gambling compacts with Washington’s Indian Tribes consistent with IGRA. The Task Force noted that the negotiating team had chosen this language “based upon recurring themes throughout state gambling statutes” (Bingo Task Force report, 1993, page 31).

In 1994, the Legislature enacted 2SHB 2228, which codified the Task Force’s recommendations as follows:

The public policy of the State of Washington on gambling is to keep the criminal element out of gambling by limiting the nature and scope of gambling activities and by strict regulation and control.

This statement was added to RCW 9.46.010 Legislative Declaration. The remaining portion of the Legislative Declaration, from the 1973 law, was retained.

The Legislative Task Force report acknowledged that charitable and nonprofit gambling generates revenue for charitable purposes in a “voluntary and relatively painless” way (page iv). Requests from C/NP licensees to “level the playing field” as competition increased were described as part of the incremental changes that could result in rapid expansion of gambling. The Task Force noted that the Legislature should “continue to explore ways for charities to raise more money more efficiently through gambling activities” (page viii). However the report also acknowledged that the market could be reaching the saturation point (page 28).

While the Task Force acknowledged the charitable/nonprofit gambling sector in its work, its primary focus was on developing policies that would allow the State of Washington to handle effectively the pressure to expand gambling, primarily in the commercial sector.

Paragraph	HB 453 (1969) A.G. Gorton proposed (failed)	HB 50 (1970) (failed)	EHB 291 (1971)	SHB 711 (1973)
One	It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from gambling activities in this state; to restrain all persons from patronizing such activities when conducted for the profit of any person; to safeguard the public against the evils induced by common gamblers and common gambling houses...	It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from gambling activities in this state; to restrain all persons from patronizing such activities when conducted for the profit of any person; to safeguard the public against the evils induced by common gamblers and common gambling houses...	It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; to restrain all persons from patronizing such professional gambling activities; to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling...	It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; to restrain all persons from patronizing such professional gambling activities; to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling...
One	...and at the same time, to preserve the freedom of the press and to avoid restricting participation by individuals in sports and social pastimes which are not for profit, do not affect the public, and do not breach the peace.	...and at the same time, to preserve the freedom of the press, to avoid restricting participation by individuals in sports and social pastimes which are not for profit, do not affect the public, and do not breach the peace...	...and at the same time, to preserve the freedom of the press and to avoid restricting participation by individuals in sports and social pastimes, which social pastimes are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.	...and at the same time, both to preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes, which activities and social pastimes are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.

Paragraph	HB 453 (1969) (Gorton)	HB 50 (1970)	EHB 291 (1971)	SHB 711 (1973)
Two	<i>No comparable language.</i>	...and differentiate clearly between professional gambling for profit and charitable fund-raising by bona fide charitable and nonprofit organizations..	The legislature hereby declares that the raising of funds for the promotion of bona fide charitable, educational, scientific, health, religious, civic and patriotic causes and undertakings is in the public interest and that it must differentiate clearly between gambling for profit and professional fund-raising by bona fide charitable and nonprofit organizations.	The legislature further declares that the raising of funds for the promotion of bona fide charitable or nonprofit organizations is in the public interest as is participation in such activities and social pastimes as are hereinafter in this chapter authorized.
Three	<i>No comparable language.</i>	<i>No comparable language.</i>	The legislature further finds that, as conducted prior to the enactment of this 1971 amendatory act, bingo was the subject of exploitation by professional gamblers, promoters and commercial interests.	<i>No comparable language.</i>
Four	<i>No comparable language.</i>	<i>No comparable language.</i>	It is hereby declared to be the policy of the legislature that all phases of the supervision and regulation of bingo and of the conduct of bingo games, raffles, pinball machines and other similar mechanical amusement devices, amusement games, social card rooms, punch boards and pull tabs, should be closely controlled.	The legislature further declares that the conducting of bingo, raffles and amusement games and the operation of punch boards, pull tabs, card rooms, Mah Jongg, social card rooms and other social pastimes, when conducted pursuant to the provisions of this chapter and any rules and regulations adopted pursuant thereto, are hereby authorized, as are only such lotteries for which no valuable consideration has been paid or agreed to be paid as hereinafter in this chapter provided.
Five	All provisions of this act shall be liberally construed to achieve these ends, and administered and enforced with a view to carrying out the above declaration of policy.	All provisions of this act shall be liberally construed to achieve these ends, and administered and enforced with a view to carrying out the above declaration of policy.	All of the provisions of this 1971 amendatory act shall be liberally construed to achieve these ends, and administered and enforced with a view to carrying out the above declaration of policy.	All factors incident to the activities authorized in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end.

1994 Addition to the Legislative Declaration. The following language was added to the beginning of RCW 9.46.010, Legislative Declaration, in 1994, through 2SHB 2228:

The public policy of the State of Washington on gambling is to keep the criminal element out of gambling by limiting the nature and scope of gambling activities and by strict regulation and control.

The remainder of the language, as shown below, was retained:

It is hereby declared to be policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; to restrain all persons from patronizing such professional gambling activities; to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling and at the same time, both to preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes, which activities and social pastimes are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.

The legislature further declares that the raising of funds for the promotion of bona fide charitable or nonprofit organizations is in the public interest as is participation in such activities and social pastimes as are hereinafter in this chapter authorized.

The legislature further declares that the conducting of bingo, raffles and amusement games and the operation of punch boards, pull tabs, card rooms, Mah Jongg, social card rooms and other social pastimes, when conducted pursuant to the provisions of this chapter and any rules and regulations adopted pursuant thereto, are hereby authorized, as are only such lotteries for which no valuable consideration has been paid or agreed to be paid as hereinafter in this chapter provided.

All factors incident to the activities authorized in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end.